(02)

Division Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

CR. APPEAL NO. 503 /92.

Appellant:- (In Jail) Mangloo son of Phirtoo Dhobi, aged 45 years, resident of village Tilda, tahsil Baloda Bazar, Distt. Raipur. MP.

Versus.

Respondent:- The State of M.P. through P.S. Baloda Bazar, Distt. Raipur.

23-4-92 L.B. Dubey Advocate

R. to D.R. 23-4-92 DL

CRIMINAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE, 1973.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 503 OF 1992

Mangloo

Vs.

State of Chhattisgarh

J U D G M E N T

(46)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 503 OF 1992

Mangloo

Vs.

State of Chhattisgarh

CORAM :- Hon'ble Shri Fakhruddin and
Hon'ble Shri Dilip Deshmukh, JJ

Appellant by Shri Prashant Jaiswal, Sr. Advocate with Smt. Kiran Jain and Shri Ali Asgar, Advocates.

State by Shri J.D. Bajpai, Addl. Public Prosecutor/ Govt. Advocate with Shri Rayindra Agrawal, Panel Lawyer.

J U D G M E N T

As per Fakhruddin,J

Heard.

2. Appellant Mangloo has preferred this appeal against the judgment dated 18-2-1992 passed by the Additional Sessions Judge, Baloda Bazar whereby he has been convicted under Section 302 of I.P.C. for committing murder of his wife and sentenced to Imprisonment for life.

3. Briefly stated the prosecution case is that the wife of accused namely Jira Bai, his elder son Suresh, wife of Suresh- Urmila, younger son of the accused namely Tikaram had gone to village Tilda to the house of accused Mangloo to celebrate Diwali festival and were residing at the house of accused Mangloo. One day prior to the date of incident 31-10-1990, i.e. Devuthani Gyaras, in the night accused appellant had came from Baloda Bazar to Tilda and started quarreling with his wife saying as to why his wife and son Suresh

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Kumar had borrowed money from one Uttam Maharaj of Baloda Bajar in his name. As a sequel of quarrel, wife of accused, his son Suresh, daughter-in-law Urmila Bai and younger son Tikaram slept in the house of another son of accused appellant namely Mohan. On the next day i.e. 31-10-1990, while two daughters-in-law P.W. 1 Shanti Bai and P.W. 7 Urmila Bai had gone to take bath in a pond at about 9-10 A.M., deceased Jira Bai and Tikaram were in the house of Mohan who had gone to Baloda Bazar with Suresh. Accused Mangloo came to the house of Mohan and assaulted his wife by Lathi. Jira Bai ran towards the road in order to save herself, but the accused chased her and again assaulted her by Lathi on the road, which was witnessed by Nandlal (P.W. 4) and Bhaktu (P.W. 9). As a result of *marpeet*, Jira Bai fell down on the ground and became unconscious. The accused appellant fled away. At that time, two daughters-in-law P.W. 1 Shanti Bai and P.W. 7 Urmila Bai were returning from the pond. Seeing Jira Bai in injured condition, they took her to their house. Soon after, accused appellant again came to the house of Mohan and beat Jira Bai. This incident was seen by daughters-in-law of the appellant namely P.W. 1 Shanti Bai and P.W. 7 Urmila Bai and due to fear they ran to the house of their elder father-in-law Sukrat. Then when they returned to their house, they saw that Jira Bai has died. Shanti Bai lodged Dehati Nalishi vide Ex. P-1. Appellant's sons Suresh and Mohan along with village Kotwar went to lodge report to the Police Station. The dead body was sent to Govt. Hospital, Baloda Bazar for post mortem vide Ex. P-2. Post mortem was conducted by P.W. 2 Dr. Ashok Jhanwar and the post mortem report is Ex. P-3. After investigation challan was filed. The

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case was committed to the trial Court. Charge was framed. The accused appellant abjured guilt and contended that he has been falsely implicated in the case.

4. The prosecution examined as many as 10 witnesses. Heavy reliance is placed by the trial Court on the testimony of P.W. 1 Shanti Bai, P.W. 4 Nandlal, P.W. 7 Urmila Bai and P.W. 9 Bhaktu. Learned trial Judge after hearing and considering the material on record found the accused appellant guilty for the offence under Section 302 of the Indian Penal Code, convicted and sentenced him as stated hereinabove.

5. Shri Jaiswal, learned Senior Counsel assailed the finding of the trial Court and contended that the conviction and sentence is illegal and contrary to law. He further submits that there is no legal and reliable evidence on record to connect the appellant with the offence. He further submitted that the witnesses bear enmity with the appellant due to family dispute. He further contended that the appellant was in drunken condition. He referred to para 21 of evidence of P.W. 1 Shantibai and Para 18 of the evidence of P.W. 7 Urmila Bai and submits that at the time of incident, the appellant was not in senses being in drunken condition. Learned Sr. Counsel further contended that the length of Lathi is only 1½ feet therefore, the intention of the appellant may not be of killing. He lastly contended that the intention of the appellant was not to kill his wife and at the most the offence may be under Section 304 and not under section 302 of I.P.C.

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6. Shri Ravindra Agrawal, learned Panel lawyer appearing for the respondent-State supported the judgment passed by the trial Court and submitted that there is no infirmity in the judgment.

7. So far as the contention of the learned Sr. counsel for the appellant that at the time of incident, the accused appellant was in drunken condition, is concerned, Section 85 of I.P.C. is relevant and quoted below:-

> **"85. Act of a person incapable of judgment by reason of intoxication caused against his will-** Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law provided that the thing which was administered to him without his knowledge or against his will."

In the present case there is nothing on record that the appellant had consumed liquor against his will. Therefore this contention of the learned Sr. Counsel has no merit.

8. So far as the next contention of the learned counsel for the appellant that the length of Lathi was only 1½ feet therefore, the intention of the appellant was not to kill, and the offence would be under Section 304 of I.P.C. and not under Section 302 of I.P.C. is concerned, it will further be appropriate to note that one day prior to the date of incident, there was a quarrel between the appellant and the deceased and the appellant was not happy because the deceased had borrowed some money from one Uttam Maharaj. First he assaulted the deceased in house and when she ran away towards road, he chased her and again on road, he beat her. When the two

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daughters-in-law took Jira Bai to their house and closed the door from inside, the accused again came there and pushed the door and then again inflicted injuries. Post mortem report is there to show that the cause of death is shock due to hemorrhage as a result of multiple lacerated wounds, fracture of scalp. Therefore, the intention of the appellant to kill his wife is clear. Borrowing Rs. 50/- cannot be said to be provocation; on the other hand it goes to show that wife was in dire need of money.

9. In view of the questions and submissions made, it is just and proper to consider the evidence of the witnesses in detail.

10. P.W. 1 Shanti Bai is daughter-in-law of the accused appellant. In her evidence, she has stated that in the night of Ekdashi, Jira Bai had told her that accused has committed *Marpeet* with her. She has further stated that on the next day of Ekadashi i.e. the date of incident, when Urmila Bai and she were returning from the pond, they saw that Jira Bai was lying unconscious on the road and there was injury on her head and it was bleeding and her bone of right hand was fractured. She further stated that her brother-in-law Tikaram was weeping there and when they asked as to why Jira Bai is lying unconscious and who has beaten her, Tikaram told that accused appellant Mangloo has beaten her. She further stated that when they took Jira Bai to their house, her father-in-law accused appellant Mangloo again came there abusing filthily and inflicted injuries to her mother-in-law Jira Bai. In para 18 of cross-examination, she has denied the suggestion that she had any inimical relations with her father-in-law. In para 30 of cross-

examination, she has denied the suggestion that due to enmity, she is implicating the accused.

11. P.W. 7 Urmila Bai is another daughter-in-law of the accused appellant. In her evidence, she has stated that in the evening of 'Ekadashi', accused quarreled with Jira Bai. She further stated that on the next day, when Shanti Bai and she were returning, they saw that their monther-in-law Jira Bai was lying down and there were injuries on her head and body and there was bleeding. She further stated that her brother-in-law Tikaram was weeping there. She further stated that Tikaram told her that Mangloo had inflicted injuries to Jira Bai by means of Lathi. They took the body to house and closed the door from inside. She further stated that the accused appellant again came there and started abusing filthily and when he pushed the doors, they opened it. Then the accused entered into the house and again inflicted injuries to Jira Bai by means of Lathi. She stated that her husband Suresh, her elder brother-in-law Mohan along with Kotwar went to lodge the report.

12. P.W. 4 Nandlal is stated to have seen the incident on the road. He has stated in his evidence that on the next day of Devuthani Ekadashi at about 9-10 A.M., he saw that the accused was beating his wife by means of Lathi, as a result of which Jira Bai fell down. He further stated that accused appellant Mangloo fled away towards locality leaving Jira Bai there. He further stated that as a result of beating, Jira Bai became unconscious on the road. He further stated that after some time, P.W. 1 Shanti Bai and P.W. 7 Urmila Bai came there from pond and took their mother-in-law to their house. He has

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further stated that when Mangloo was inflicting injuries to his wife by Lathi, Tikaram, some other children were there crying 'save, save'. He further stated at the time of incident, he requested Mangloo not to beat, but Mangloo did not care.

13. P.W. 9 Bhaktu is another witness who is said to have seen the incident on road. He stated that he had seen the accused appellant inflicting injuries to his wife Jira Bai. He further stated that when he requested the accused not to beat his wife, the accused stopped bearing his wife and went towards locality. He further stated that as a result of the injuries sustained by Jira Bai, she fell down on the ground. He also stated that at that time, two daughters-in-law of Jira Bai came from pond and took Jira Bai to their house.

14. Evidence of eye-witnesses P.W. 1 Shanti Bai, P.W. 4 Nandlal, P.W. 7 Urmila Bai and P.W. 9 Bhaktu is supported by evidence of P.W. 12 Dr. Ashok Kumar and medical evidence. P.W. 12 Dr. Ashok Kumar Jhanwar is the person who conducted post mortem and Ex. P-3 is the post mortem report. The doctor has found following injuries on the dead body:-

(i) Lacerated wound over the skull frontal region, present oblique over the middle 1/3rd region of right eye-brow to frontal region size 5 cm x 1 cm x bone deep;

(ii) Lacerated wound over the scalp. 7 cm above the root of nose over left frontal region size 6 cm x 2 cm x bone deep.

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(iii) Lacerated wound over the scalp. Over the left parietal region 4 cm above the injury no. 2. Size measuring 5 cm x 2 cm x bone deep;

(iv) Lacerated wound over parietal region, size 3 cm x 3 cm x 4 cm above the injury no. 3;

(v) Lacerated would over scalp. Occipital region left side present in area 8 cm x 8 cm, bone deep and extending over the back of neck. Fracture of parietal bone present. Fracture of left occipital bone;

(vi) Lacerated wound over the left ear Horizontally size 3 cm x 3 cm x 1 cm;

(vii) Lacerated wound over the left mastoid region size 3 cm x 3 cm x 1 cm;

(viii) Bruise over the face parotid region, size 4 cm x 4 cm- left side.

(ix) Bruise over the abdomen size 14 cm x 3 cm;

(x) Multiple abrasions over Rt. forearm 6 in number size 5 cm each present in lower 1/3rd area;

(xi) Bruise size 3 cm x 3 cm, fracture of shaft of radius and ulna middle 1/3 region right side 12 cm below the prominence of elbow.

The doctor has categorically opined that the cause of death was shock due to hemorrhage as a result of multiple lacerated wounds, fracture of scalp. He further opined that the death is homicidal in nature.

15. The trial Court has relied upon the evidence led by the P.W. 1 Shanti Bai, P.W. 4 Nandlal, P.W. 7 Urmila Bai and P.W. 9 Bhaktu.

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We have also gone through the evidence led by these witnesses and discussed hereinabove. P.W. 1 Shanti Bai and P.W. 7 have stated that on the next day of Ekadashi at about 9-10 A.M. when Mohan and Suresh had gone to Baloda Bazar, they went to pond to take bath leaving their mother-in-law Jira Bai and brother-in-law Tikaram in the house. They further stated that when they were returning from pond, they saw their mother-in-law Jira Bai in injured and unconscious condition. She further stated that on askance, Tikaram told that Mangloo had beaten Jira Bai by means of Lathi. Then they took Jira Bai to their house. P.W. 4 Nandlal and P.W. 9 Bhaktu in their evidence have stated that on the date of incident at about 9-10 A.M. they saw that accused was inflicting injuries to his wife Jira Bai as a result of which she fell down. There is nothing in their cross-examination to discard their testimony. There is also nothing on record to show that there was any enmity between the accused and these two independent witnesses. Therefore, it is proved beyond reasonable doubt that the accused caused injuries at three places; first in the house, then on the road and then again in the house and killed his wife. There was no provocation. It is brutal murder and we are of the considered opinion that the appellant has committed the offence punishable under Section 302 of I.P.C.

16. Having considered the facts and circumstances of the case and material on record and looking to the fact that the deceased was beaten mercilessly and died due to injuries received and in view of the discussion made hereinabove, in the opinion of this Court, there

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is no infirmity in the findings recorded by the learned trial Court. The appeal accordingly fails and is dismissed.

17. The appellant is on bail. His personal bond and surety bond are cancelled. It is directed that the appellant shall surrender on 17-10-2005 before the Chief Judicial Magistrate concerned to undergo the remaining sentence.

18. Before parting, this Court appreciates the valuable assistance rendered by the learned counsel for the parties.

Sd/-
Fakhruddin
Judge
26-7-2005

Sd/-
Dilip Raosaheb Deshmukh
Judge
26-7-2005

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